In the High Court of Judicature at Madras

Dated : 28.8.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1168 of 2007

The Commissioner of Income Tax
Salem. .. Appellant

Vs

M/s. Well Trust Investments
17B III Street
New Fairlands, Salem .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'D' Bench dated 22.11.2005 made in I.T.A.No.2874/Mds/04 for the assessment year 1997-98 against the order of the Commissioner of Income Tax (Appeals) Salem ITA.No.172/02-03 dated 19.08.2004 PAN/GIR.No./TAN.No.13FWoo3 Assessment Year 1997-98 against the order of the Income Tax Officer Ward I(3) Salem, PAN/GIR.No.13FWooo3 Assessment Year 1997-98 order of date 28.03.2002.

For Appellant : Mr.T.Ravikumar,
Standing Counsel (Income Tax)

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed by the Revenue against the order of the Income Tax Appellate Tribunal Madras 'D' Bench made in I.T.A.No.2874/Mds/2004 dated 22.11.2005. The relevant assessment year is 1997-98.

2. The assessee, a firm, filed its return of income for the assessment year 1997-98 on 25.8.1999 admitting income of Rs.86,100/-. As the return of income was filed beyond the time limit prescribed under Section 139(1) and 139 (4) of the Income Tax Act, the assessing officer completed the assessment treating the assessee as association of persons by disallowing the claim of interest on capital and salary to working partners. Aggrieved by that order, the assessee filed an appeal to the

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Commissioner of Income Tax (Appeals) , who held that the treatment of the assessee as association of persons by the assessing officer was not correct and remanded back the matter to the assessing officer to decide the issue on dis-allownace. Aggrieved by the same, the Revenue filed an appeal to the tribunal. The Tribunal has confirmed the order of the Commissioner of Income Tax (Appeals) on the ground that the assessment was not made under Section 144 and as such Section 184(5) would not apply. The correctness of the said order is now assailed before us by the Revenue by filing the appeal and framing the following substantial questions of law:-

> " Whether in the facts and circumstances of the case, the Tribunal was right in holding that the provision of the section 184(5) cannot be invoked to treat the assessee's status as Association of Persons when the assessment is not under section 144. "

3. According to the learned counsel for the Revenue, the infraction on the part of the assessee in not filing the returns within the period as provided under Section 139 is one of the failures stated in Section 144(1) of the Income Tax Act. Hence the assessee has to be assessed as an Association of persons and the view expressed by the authorities on the statutory provisions cannot be legally sustainable.

4. We heard the arguments of the learned counsel for the Revenue and perused the materials on record.

5. Section 184(5) as it was obtaining during the relevant assessment period i.e. 1997-98 provides that notwithstanding anything contained in the foregoing provisions of that section, where, in respect of any assessment year, there was on the part of the firm any such failure as is mentioned in section 144, the firm shall not be assessed as such for the said assessment year and, thereupon, the firm shall be assessed in the same manner as an association of persons, and all the provisions of the Act shall apply accordingly.

6. As per sub-section (5) of Section 184 if there is failure on the part of the assessee as mentioned in Section 144, the firm shall not be assessed as such for the said assessment year and the firm shall be assessed in the same manner as an association of persons and all the provisions of the Act shall apply accordingly.

7. It might be true that the assessee might have infracted the requirement of sub-section (1) of Section 144. But the highest fact finding authority, the Appellate Tribunal has recorded a finding that from the records, it was seen that the assessment was made under Section 143(3) read with Section 147 of the Income Tax Act. There was no assessment made under Section 144 of the Act. From that fact appearing on record, it was abundantly clear that the delay if any in filing the

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returns under Section 139(1) was deemed to have seen condoned by the assessing officer. In such an event applying the provision of Section 184(5) for treating the assessee firm as association of persons was not justified in law. Thus, recording a finding the Appellate Tribunal approved the action of the Commissioner of Income Tax (Appeals) in directing the assessing officer to treat the assessee firm as registered firm and consider the reliefs claimed by the assessee under Section 40 (b)(iv) of the Act. In view of the fact the assessment was framed under under Section 143(3) read with Section 147, but not under Section 144, we find the question of law formulated in this appeal for consideration that whether in the facts and circumstances of the case, the Tribunal was right in holding that the provision of Section 184(5) cannot be invoked to treat the assessee's status as association of persons, when the assessment is not under Section 144 cannot be regarded as one raised for consideration and for that reasons the appeal is liable to be dismissed. Accordingly, the tax case appeal is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

krr/

To

1.The Assistant Registrar,
Income-Tax Appellate Tribunal,
III Floor, Rajaji Bhavan,
Besant Nagar, Madras 90.

2. The Commissioner of Income Tax (Appeals) Salem.

3. The Income Tax Officer Ward I(3), Salem -7

4. The Commissioner of Income Tax, Salem

1 cc To Mr.N.Muralikumaran, Advocate, SR.53707.

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